

Dollars (\$100,000.00), on the terms and under the conditions specified in the Agreement of Settlement.

4. Ozark has filed a Petition for Rulemaking to add Channel 276C3 to Eminence, Missouri and a *Notice of Proposed Rulemaking* has been issued, looking towards the adoption of that proposal, in Docket No. 01-151. The allocation of Channel 276C3 to Eminence, Missouri is inconsistent with the upgrade proposed by Four Him at Potosi, Missouri. Therefore, as part of the Agreement of Settlement, Ozark has agreed that the proceedings in Docket No. 01-151 should be either terminated without adding Channel 276C3 to Eminence or, in the alternative, that a Counterproposal filed by Four Him to allocate a different channel to Eminence should be granted.

5. Approval of the Agreement of Settlement will serve the public interest. It will forestall the filing of an appeal, directed against the Audio Division's *Memorandum Opinion and Order* of June 24, 2005. It will enable an immediate upgrade in the facilities of Station KHZR, Potosi, Missouri. Thus, it will eliminate the need for further litigation, which would otherwise place a burden on the FCC's staff resources. At the same time, it will provide for improved service to the public from Station KHZR.

6. WHEREFORE, it is respectfully requested that the Audio Division simultaneously take the following actions:

- A. Approve the Agreement of Settlement attached hereto; and,
- B. Dismiss the Application; and,
- C. Reconsider the *Memorandum Opinion and Order* (DA 05-1715), which denied Four Him's Petition for Reconsideration of the denial of its Petition for Rulemaking and grant the Petition for Rulemaking filed by Four Him and described in the aforesaid *Memorandum Opinion and Order*; and,

- D. Resolve the proceedings in Docket No. 01-151 without allocating Channel 276C3 to Eminence, Missouri and, instead, grant Four Him's Counterproposal, filed September 4, 2001, which proposes to allocate a different channel to Eminence, Missouri.

Respectfully submitted,

July 25, 2005

FOUR HIM ENTERPRISES, LLC

GAMMON & GRANGE, PC  
8280 Greensboro Drive  
7<sup>th</sup> Floor  
McLean, VA 22102-3807

By: A. Wray Fitch III  
A. Wray Fitch  
Its Attorney

OZARK BROADCASTING, INC.

Law Office of  
LAUREN A. COLBY  
10 E. Fourth Street  
P.O. Box 113  
Frederick, MD 21705-0113

By: Lauren A. Colby  
Lauren A. Colby  
Its Attorney

## AGREEMENT OF SETTLEMENT

Agreement of Settlement, made and entered into this 20<sup>th</sup> day of July, 2005, by and between Four Him Enterprises LLC, a Missouri limited liability company ("Four Him") and Ozark Broadcasting Inc., a Missouri Corporation ("Ozark").

### WITNESSETH:

WHEREAS, Four Him holds the license issued by the Federal Communications Commission ("FCC") for station KHZR, channel 249C3 Potosi, Missouri; and

WHEREAS, Four Him filed a Petition for Rulemaking, proposing the substitution of channel 249C2 for channel 249C3 at Potosi and modification of the license of Station KHZR to specify operation on channel 249C2 (RM-10567) (Potosi Rulemaking); and

WHEREAS, in order to accommodate this upgrade, Four Him proposed channel substitutions at Rolla and Linn, Missouri and the channel substitution at Rolla required the reclassification of Ozark's station at Lebanon, Missouri, KJEL, from a full class C station to a class C0 station; and

WHEREAS, Ozark resisted the reclassification of KJEL and filed an application (File No. BPH-20030401ABZ) ("the Application") to retain full class C status for station KJEL; and

WHEREAS, because of the filing of the Application, the Commission staff rejected Four Him's Petition for Rulemaking; and

WHEREAS, Four Him petitioned the Audio Division for reconsideration but, by *Order* (DA05-1715) released June 24, 2005, the Audio Division denied reconsideration; and

WHEREAS, Four Him has a right to appeal the Audio Division's decision to the full commission; and

WHEREAS, the parties desire to forestall the filing of any such appeal and, instead, to settle their differences on an amicable basis;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants set forth herein, it is agreed as follows:

1. **Joint Petition:** Within 5 days of the date of execution of this Agreement, the parties hereto will file a joint petition, asking the FCC's Audio Division to simultaneously do the following:

- a. Approve this Agreement;
- b. Dismiss the Application;
- c. Reconsider the Audio Division's Memorandum Opinion and Order (DA05-1715) (Petition for Reconsideration) and grant of the Potosi Rulemaking; and
- d. Request Commission action in Docket No. 01-151, RM-10167, consistent with the Potosi Rulemaking, requesting dismissal of Ozark's request to allocate Channel 276C3 to Eminence, Missouri, and grant of Four Him's Counterproposal filed September 4, 2001)

The parties will vigorously prosecute the Joint Petition and do all things reasonably necessary and/or appropriate to obtain a grant thereof.

2. **Ozark Consideration:** Ozark agrees to take the following actions:

- a. Request dismissal of the Application.
- b. Request the dismissal of allocation of Channel 276C3 to Eminence, MO, as proposed in Rulemaking Docket Number 01-151 and to support, to the extent necessary, Four Him's Counterproposal in Docket Number 01-151.
- c. Support Four Him's Petition for Reconsideration and the Potosi Rulemaking.

5. Missouri Contract: This Agreement is a Missouri contract and shall

Agreement shall continue in full force and effect.

terminate this Agreement, pay the consideration provided in Section 3 and this date of this Agreement, provided however, Four Him may in the event Ozark elects to Settlement Agreement and/or the Rulemaking has not been granted within 2 years of the

4. Termination: Either party may terminate this Agreement if the

- interest may be subordinate.
- of the UCC-1 Form. Ozark acknowledges that its security license. Such security interests will be evidenced by the filing including, to the maximum extent permitted by law, the station owned by Four Him used or useful in the operation of KHZR secured by a security interest and all the personal property penalty in the event of early payment. The Note shall be adjusted every 6 months. The Note shall provide for no principal and interest over 60 months. The interest rate shall be The Note shall be payable in equal monthly installments of bearing interest at the rate of prime plus one percentage point reasonably satisfactory to Ozark, in the amount of \$80,000 Rulemaking a Promissory Note, in form and substance
- b. In addition, Four Him shall deliver to Ozark on grant of the grant of the Potosi Rulemaking.
- a. Four Him will deposit \$20,000 in an Escrow Account in the SunTrust Bank in Frederick, Maryland, within ten days of this Agreement. The Escrow Deposit shall be held pursuant to the terms of the Escrow Agreement as provided in Exhibit 1. Four Him will authorize release of the Escrow Deposit to Ozark on

shall be made as follows:

KHZR to specify operation on Channel 249C2, Potosi, MO. Payment of the \$100,000 \$100,000 conditioned on approval of this Agreement and the Potosi Rulemaking allowing

3. Four Him Consideration: Four Him agrees to pay Ozark the sum of

- d. Consent to modification of the KJEL(FM) license to specify operation as a Class C0 station or Channel 279C0 Lebanon, MO.

be construed and interpreted in accordance with the laws of that state (other than laws relating to conflict of laws).

6. **Counterparts**: This Agreement may be executed in counterpart and/or by telecopy and, when so executed, the counterparts, taken together, shall constitute a complete and binding agreement.

7. **Notices**: Any notices required or permitted by this Agreement shall be deemed complete when sent by overnight courier addressed as follows:

If to Ozark:	David Shepherd Ozark Broadcasting, Inc. 300 West Reed Moberly, Missouri 65270
--------------	--

With a copy to:	Lauren A. Colby, Esquire 10 East 4th Street Frederick, Maryland 21701
-----------------	---

If to Four Him:	Michael Fallon, Member Four Him Enterprises LLC 4600 Executive Centre Parkway Suite A St. Peters, Missouri 63376
-----------------	--

With a copy to:	A. Wray Fitch III 8280 Greensboro Drive 7 <sup>th</sup> Floor McLean, Virginia 22102
-----------------	---

IN WITNESS WHEREOF, the parties to this Agreement have set their hand and seals, and/or the hand and seals of their authorized representative, as of the date first above written.

**OZARK BROADCASTING, INC.**

By: \_\_\_\_\_  
David Shepherd, President

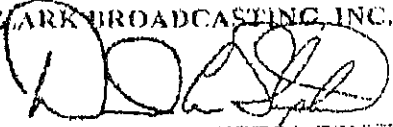
**FOUR HIM ENTERPRISES LLC**

By: \_\_\_\_\_  
Michael Fallon, Member

IN WITNESS WHEREOF, the parties to this Agreement have set their  
hand and seals, and/or the hand and seals of their authorized representative, as of the date  
first above written.

DEARK BROADCASTING, INC.

By: \_\_\_\_\_

  
David Shepherd, President

FOUR HIM ENTERPRISES LLC

By: \_\_\_\_\_

Michael Patton, Member



IN WITNESS WHEREOF, the parties to this Agreement have set their  
hand and seals, and/or the hand and seals of their authorized representative, as of the date  
first above written.

**OZARK BROADCASTING, INC.**

By: \_\_\_\_\_  
David Shephard, President

**FOUR HIM ENTERPRISES LLC**

By: Matthew Brass  
~~Michael Fulton, Member~~  
MATTHEW BRASS

**FILE COPY**

*Before the  
Federal Communications Commission  
Washington, D.C. 20554*

**STAMP & RETURN  
RECEIVED**

**JUL 25 2005**

In the Matter of: )  
)  
Reclassification of License of )  
FM Station KJEL )  
(Lebanon, Missouri) )  
)  
Amendment of §73.202(b), )  
Table of Allotments, )  
FM Broadcast Stations, )  
(Eminence, Missouri) )

Federal Communications Commission  
Office of Secretary  
DA 05-1715  
RM-10567

MB Docket No. 01-151  
RM-10167

TO: Marlene Dortch, Secretary  
Attn: Audio Division

**JOINT PETITION FOR APPROVAL OF AGREEMENT  
AND FOR OTHER RELIEF**

Four Him Enterprises, LLC ("Four Him") and Ozark Broadcasting, Inc. ("Ozark"), by their respective attorneys, hereby jointly request the Audio Division to simultaneously take the following actions:

- A. Approve the Agreement of Settlement attached hereto; and,
- B. Dismiss the application of Ozark (File No. BPH-20030401ABZ) for full Class C facilities at FM Broadcast Station KJEL, Lebanon, Missouri (the "Application"); and,
- C. Reconsider the *Memorandum Opinion and Order* (DA 05-1715), which denied Four Him's Petition for Reconsideration of the denial of its Petition for Rulemaking; and,
- D. Resolve the proceedings in Docket No. 01-151 without allocating Channel 276C3 to Eminence, Missouri and, instead, grant Four Him's Counterproposal, filed September 4, 2001, which proposes to allocate a different channel to Eminence, Missouri.

In support thereof, it is alleged:

1. On June 24, 2005, the Audio Division released a *Memorandum Opinion and Order* (DA 05-1715), denying a Petition for Reconsideration filed by Four Him and directed against a staff letter, rejecting Four Him's Petition for Rulemaking. Four Him is the licensee of Station KHZR, Channel 249C3, Potosi, Missouri. In its Petition for Rulemaking, Four Him proposed the substitution of Channel 249C2 for Channel 249C3 at Potosi and modification of the Station KHZR license to specify operation on Channel 249C2. In order to accommodate this upgrade, Four Him proposed channel substitutions at Rolla and Linn, Missouri. The channel substitution at Rolla required the reclassification of Station KJEL, Channel 279C, Lebanon, Missouri to Channel 279C0.

2. Ozark is the licensee of Station KJEL. Ozark filed the above-described Application for full Class C status for Station KJEL and, because of the filing of that Application, the Audio Division rejected Four Him's Petition for Rulemaking and denied Four Him's Petition for Reconsideration.

3. The FCC has now established a window for settlement in rulemaking proceedings. Acting on that window, Four Him and Ozark have entered into discussions, looking toward an amicable settlement of their differences. An Agreement of Settlement has been reached, a copy of which is attached hereto and marked Exhibit A. Under that Agreement, Ozark will dismiss its application for Class C facilities for Station KJEL and join in requesting the Audio Division to reconsider its action, taken by *Memorandum Opinion and Order*, released June 24, 2005, and grant Four Him's Petition for Rulemaking. In return, Four Him will pay Ozark the sum of One Hundred Thousand

Dollars (\$100,000.00), on the terms and under the conditions specified in the Agreement of Settlement.

4. Ozark has filed a Petition for Rulemaking to add Channel 276C3 to Eminence, Missouri and a *Notice of Proposed Rulemaking* has been issued, looking towards the adoption of that proposal, in Docket No. 01-151. The allocation of Channel 276C3 to Eminence, Missouri is inconsistent with the upgrade proposed by Four Him at Potosi, Missouri. Therefore, as part of the Agreement of Settlement, Ozark has agreed that the proceedings in Docket No. 01-151 should be either terminated without adding Channel 276C3 to Eminence or, in the alternative, that a Counterproposal filed by Four Him to allocate a different channel to Eminence should be granted.

5. Approval of the Agreement of Settlement will serve the public interest. It will forestall the filing of an appeal, directed against the Audio Division's *Memorandum Opinion and Order* of June 24, 2005. It will enable an immediate upgrade in the facilities of Station KHZR, Potosi, Missouri. Thus, it will eliminate the need for further litigation, which would otherwise place a burden on the FCC's staff resources. At the same time, it will provide for improved service to the public from Station KHZR.

6. WHEREFORE, it is respectfully requested that the Audio Division simultaneously take the following actions:

- A. Approve the Agreement of Settlement attached hereto; and,
- B. Dismiss the Application; and,
- C. Reconsider the *Memorandum Opinion and Order* (DA 05-1715), which denied Four Him's Petition for Reconsideration of the denial of its Petition for Rulemaking and grant the Petition for Rulemaking filed by Four Him and described in the aforesaid *Memorandum Opinion and Order*; and,

- D. Resolve the proceedings in Docket No. 01-151 without allocating Channel 276C3 to Eminence, Missouri and, instead, grant Four Him's Counterproposal, filed September 4, 2001, which proposes to allocate a different channel to Eminence, Missouri.

Respectfully submitted,

July 25, 2005

FOUR HIM ENTERPRISES, LLC

GAMMON & GRANGE, PC  
8280 Greensboro Drive  
7<sup>th</sup> Floor  
McLean, VA 22102-3807

By: A. Wray Fitch III  
A. Wray Fitch  
Its Attorney

OZARK BROADCASTING, INC.

Law Office of  
LAUREN A. COLBY  
10 E. Fourth Street  
P.O. Box 113  
Frederick, MD 21705-0113

By: Lauren A. Colby  
Lauren A. Colby  
Its Attorney

## AGREEMENT OF SETTLEMENT

Agreement of Settlement, made and entered into this 20<sup>th</sup> day of July, 2005, by and between Four Him Enterprises LLC, a Missouri limited liability company ("Four Him") and Ozark Broadcasting Inc., a Missouri Corporation ("Ozark").

### WITNESSETH:

WHEREAS, Four Him holds the license issued by the Federal Communications Commission ("FCC") for station KHZR, channel 249C3 Potosi, Missouri; and

WHEREAS, Four Him filed a Petition for Rulemaking, proposing the substitution of channel 249C2 for channel 249C3 at Potosi and modification of the license of Station KHZR to specify operation on channel 249C2 (RM-10567) (Potosi Rulemaking); and

WHEREAS, in order to accommodate this upgrade, Four Him proposed channel substitutions at Rolla and Linn, Missouri and the channel substitution at Rolla required the reclassification of Ozark's station at Lebanon, Missouri, KJEL, from a full class C station to a class C0 station; and

WHEREAS, Ozark resisted the reclassification of KJEL and filed an application (File No. BPH-20030401ABZ) ("the Application") to retain full class C status for station KJEL; and

WHEREAS, because of the filing of the Application, the Commission staff rejected Four Him's Petition for Rulemaking; and

WHEREAS, Four Him petitioned the Audio Division for reconsideration but, by *Order* (DA05-1715) released June 24, 2005, the Audio Division denied reconsideration; and

WHEREAS, Four Him has a right to appeal the Audio Division's decision to the full commission; and

WHEREAS, the parties desire to forestall the filing of any such appeal and, instead, to settle their differences on an amicable basis;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants set forth herein, it is agreed as follows:

1. **Joint Petition:** Within 5 days of the date of execution of this Agreement, the parties hereto will file a joint petition, asking the FCC's Audio Division to simultaneously do the following:

- a. Approve this Agreement;
- b. Dismiss the Application;
- c. Reconsider the Audio Division's Memorandum Opinion and Order (DA05-1715) (Petition for Reconsideration) and grant of the Potosi Rulemaking; and
- d. Request Commission action in Docket No. 01-151, RM-10167, consistent with the Potosi Rulemaking, requesting dismissal of Ozark's request to allocate Channel 276C3 to Eminence, Missouri, and grant of Four Him's Counterproposal filed September 4, 2001)

The parties will vigorously prosecute the Joint Petition and do all things reasonably necessary and/or appropriate to obtain a grant thereof.

2. **Ozark Consideration:** Ozark agrees to take the following actions:

- a. Request dismissal of the Application.
- b. Request the dismissal of allocation of Channel 276C3 to Eminence, MO, as proposed in Rulemaking Docket Number 01-151 and to support, to the extent necessary, Four Him's Counterproposal in Docket Number 01-151.
- c. Support Four Him's Petition for Reconsideration and the Potosi Rulemaking.

- d. Consent to modification of the KJEL(FM) license to specify operation as a Class C0 station or Channel 279C0 Lebanon, MO.

3. **Four Him Consideration:** Four Him agrees to pay Ozark the sum of \$100,000 conditioned on approval of this Agreement and the Potosi Rulemaking allowing KHZR to specify operation on Channel 249C2, Potosi, MO. Payment of the \$100,000 shall be made as follows:

- a. Four Him will deposit \$20,000 in an Escrow Account in the SunTrust Bank in Frederick, Maryland, within ten days of this Agreement. The Escrow Deposit shall be held pursuant to the terms of the Escrow Agreement as provided in Exhibit 1. Four Him will authorize release of the Escrow Deposit to Ozark on grant of the Potosi Rulemaking.
- b. In addition, Four Him shall deliver to Ozark on grant of the Rulemaking a Promissory Note, in form and substance reasonably satisfactory to Ozark, in the amount of \$80,000 bearing interest at the rate of prime plus one percentage point. The Note shall be payable in equal monthly installments of principal and interest over 60 months. The interest rate shall be adjusted every 6 months. The Note shall provide for no penalty in the event of early payment. The Note shall be secured by a security interest and all the personal property owned by Four Him used or useful in the operation of KHZR including, to the maximum extent permitted by law, the station license. Such security interests will be evidenced by the filing of the UCC-1 Form. Ozark acknowledges that its security interest may be subordinate.

4. **Termination:** Either party may terminate this Agreement if the Settlement Agreement and/or the Rulemaking has not been granted within 2 years of the date of this Agreement, provided however, Four Him may in the event Ozark elects to terminate this Agreement, pay the consideration provided in Section 3 and this Agreement shall continue in full force and effect.

5. **Missouri Contract:** This Agreement is a Missouri contract and shall



be construed and interpreted in accordance with the laws of that state (other than laws relating to conflict of laws).

6. **Counterparts:** This Agreement may be executed in counterpart and/or by telecopy and, when so executed, the counterparts, taken together, shall constitute a complete and binding agreement.

7. **Notices:** Any notices required or permitted by this Agreement shall be deemed complete when sent by overnight courier addressed as follows:

If to Ozark:	David Shepherd Ozark Broadcasting, Inc. 300 West Reed Moberly, Missouri 65270
--------------	--

With a copy to:	Lauren A. Colby, Esquire 10 East 4th Street Frederick, Maryland 21701
-----------------	---

If to Four Him:	Michael Fallon, Member Four Him Enterprises LLC 4600 Executive Centre Parkway Suite A St. Peters, Missouri 63376
-----------------	--

With a copy to:	A. Wray Fitch III 8280 Greensboro Drive 7 <sup>th</sup> Floor McLean, Virginia 22102
-----------------	---

IN WITNESS WHEREOF, the parties to this Agreement have set their hand and seals, and/or the hand and seals of their authorized representative, as of the date first above written.

**OZARK BROADCASTING, INC.**

By: \_\_\_\_\_  
David Shepherd, President

**FOUR HIM ENTERPRISES LLC**

By: \_\_\_\_\_  
Michael Fallon, Member

IN WITNESS WHEREOF, the parties to this Agreement have set their  
hand and seals, and/or the hand and seals of their authorized representative, as of the date  
first above written.

DEARK BROADCASTING INC.

By: \_\_\_\_\_



David Shepherd, President

FOUR HIM ENTERPRISES LLC

By: \_\_\_\_\_

Michael Fallon, Member

IN WITNESS WHEREOF, the parties to this Agreement have set their  
hand and seals, and/or the hand and seals of their authorized representative, as of the date  
first above written.

**OZARK BROADCASTING, INC.**

By: \_\_\_\_\_  
David Shephard, President

**FOUR HIM ENTERPRISES LLC**

By: Matthew Brass  
Michael Fillion, Member  
MATTHEW BRASS

FILE COPY

Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

STAMP & RETURN

In the Matter of )

Amendment of Section 73.202(b),  
Table of Allotments, )

FM Broadcast Stations.  
(Eminence, Missouri) )

Reclassification of License of FM Station KJEL  
(Lebanon, MO) )

MM Docket No. 01-151  
RM-10167

MM Docket No. 05-1715  
RM 10567

**RECEIVED**

To: The Office of the Secretary  
Attn: Assistant Chief, Audio Division

OCT - 3 2005

Federal Communications Commission  
Office of Secretary

**JOINT PETITION FOR APPROVAL OF  
AGREEMENT AND FOR OTHER RELIEF**

KDAA-KMOZ, LLC ("KKL"), and Four Him Enterprises, L.L.C. ("Four Him") hereby file this "Joint Petition for Approval and for Other Relief" ("Joint Petition") to resolve the matters raised by KKL in its "Opposition to Petition for Reconsideration" and "Opposition to Joint Petition for Approval of Agreement and for Other Relief," filed August 10, 2005, by KKL in the above-captioned docket (Rulemaking proceedings Nos. RM-10167 and RM-10567). The Joint Petition withdraws KKL's opposition to the approval of the Agreement of Settlement between Four Him and Ozark Broadcasting, Inc. ("Ozark") and related pleadings.<sup>1</sup> As a result of a settlement agreement, a copy of which is attached hereto, Four Him would pay KKL \$112,500 in complete

<sup>1</sup> This Joint Petition for Approval is being filed concurrently with the Joint Petition for Approval of Agreement, by and between Jeraldine Anderson and Four Him, whereby Jeraldine Anderson withdraws her Expression of Interest in Channel 267C3 at Eminence, Missouri, filed with Commission on July 16, 2001. This Joint Petition for Approval of Agreement is, also, being filed in conjunction with the Joint Petition for Approval of Agreement by and between Ozark

satisfaction of any obligations Four Him may have to reimburse KKL for any expenses of KKL related to changing the operating channel of KDAA or related to this rulemaking, and in exchange for KKL's agreement that it has no objection to the allotment and substitution of Channel 249C2 for Channel 249C3 for Four Him's station KJEL and will support that allotment and substitution.

By way of background, the Commission dismissed Four Him's petition for rulemaking in RM-10567 that proposed the substitution of Channel 249C2 for 249C3 at Potosi because Ozark objected to the downgrade of KJEL to Class C0. On August 23, 2003, Four Him filed a petition for reconsideration of the Commission's action, and Ozark opposed it. That petition was denied in *Memorandum Opinion and Order*, DA 05-1715, released June 24, 2005 ("MO&O"). On July 25, 2005, Four Him filed a Petition for Reconsideration of the MO&O.<sup>2</sup> The Audio Division found that Ozark had "a statutory right to be notified of the proposed modification of the Station KJEL license and an opportunity to file a response," citing *Fostering the Expanded Use of UHF Television Channels (Stockton and Modesto, California)*, 4 FCC Rcd 2d 839 (1966). Since the Commission did not provide Ozark with notice, Four Him's Petition for Rulemaking was dismissed.

Because the litigation was ongoing and the Commission had not acted, on July 12, 2004, KKL filed a "Statement for the Record and Request for Expedited Action on Application and Request to Update FM Data Base." Therein, KKL took no position on how the subject matter of the litigation should be resolved, but noted for the record that the pendency of the rulemaking petitions had prevented action on KKL's application (File No. BPH-20030701AMT) to relocate the antenna of KDAA, Rolla, MO, to the site shared by station KZNN, Rolla, MO, which is licensed to

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Broadcasting, Inc. and Four Him, which was filed with the Commission on July 25, 2005.

an affiliate of KKL. KKL showed that either Channel 248A or Channel 276A could be utilized/operated from the site specified in the application meeting all minimum distance separation requirements, assuming the other changes proposed in the Four Him proposal are made. As a result, on June 14, 2005, the Audio Division granted KKL's application conditioned on the outcome of this proceeding. Any construction of the facility would be at KKL's risk.

With the Audio Division's denial of Four Him's Petition for Reconsideration in the MO&O, KKL thought this matter was settled and that KDAA would not be required to change its operating channel. While KKL stated that it was willing to accept a construction permit for KDAA conditioned on the outcome of MB Docket 01-151, such statement did not amount to an abandonment of KKL's rights. KKL and Four Him have now resolved the matters, and KKL supports the modification of Four Him's license for KHCR, Potosi, MO. A copy of the settlement agreement containing the declarations required by Section 73.3525 is attached. The parties do not believe that the reimbursement of KKL's expenses are subject to Section 73.3525 of the Rules, but in an abundance of caution, this Joint Petition is being filed within the time limits set forth in the Commission's Public Notice, *Window Announced for Universal Settlements of Pending Rulemaking Proceedings to Amend FM Table of Allotments*, DA 05-1688, released June 20, 2005. Therein, the Commission stated that it would waive settlement reimbursement caps in rulemaking proceedings until September, 19, 2005.

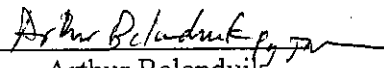
In light of the foregoing, KKL respectfully requests the Audio Division to approve the attached Settlement Agreement, and modify the license of KHZR to operate on Channel 249C2 at Potosi, MO, and the license of KDAA to operate on Channel 276A at Rolla, MO.

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<sup>2</sup> KKL is also withdrawing its opposition to this Petition for Reconsideration.

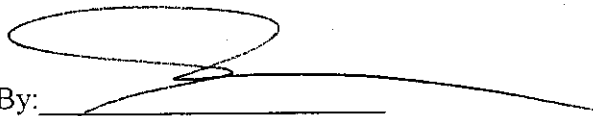
Respectfully submitted,

**KDAA-KMOZ, LLC**

By:   
Arthur Belendiuk  
Its Attorney

Smithwick & Belendiuk, P. C.  
5028 Wisconsin Avenue, NW, Suite 301  
Washington, DC 20016  
202-363-4559

**FOUR HIM ENTERPRISES, L.L.C.**

By:   
A. Wray Fitch III  
Timothy R. Obitts  
Its Attorneys

Gammon & Grange, P.C.  
8280 Greensboro Drive  
7<sup>th</sup> Floor  
McLean, VA 22102  
703-761-5000

October 3, 2005



**CERTIFICATE OF SERVICE**

I, Stephanie Patton, do hereby certify that a copy of the foregoing **JOINT PETITION FOR APPROVAL OF AGREEMENT AND FOR OTHER RELIEF** was mailed by First Class U.S. Mail, postage prepaid (or hand delivery, as marked with an asterisk), this 3<sup>rd</sup> day of October, 2005, to the following:

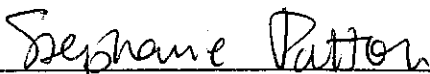
Gene A. Bechtel  
Law Office of Gene Bechtel, P.C.  
1050 17<sup>th</sup> Street, NW  
Suite 600  
Washington, D.C. 20036

Lauren A. Colby, Esquire  
Law Office of Lauren A. Colby  
10 East 4<sup>th</sup> Street  
Frederick, Maryland 21701

Barthen Gorman, Esquire  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Robert Hayne, Esquire  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Gary S. Smithwick  
Smithwick & Belendiuk, P.C.  
5028 Wisconsin Avenue, NW  
Suite 301  
Washington, D.C. 20016

  
Stephanie Patton